

(1999) 03 KL CK 0043
In the High Court Of Kerala
Case No : W.A. 1531 of 1998

M. Madhavan Nair Jayasree

APPELLANT

Vs

Manjeri Municipality and Another

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Kerala Municipalities Act, 1994 — Section 243, 509
Taxation and Finance Rules — Rule 27

Citation : AIR 1999 Ker 322

Hon'ble Judges : G. Sasidharan, J;Ar. Lakshmanan, J

Bench : Division Bench

Advocate : P. Ravindran, for the Appellant; P.C. Sasidharan, for the Respondent

Judgement

Ar. Lakshmanan, J.—The petitioner in O.P. No. 22596 of 1997 is the appellant herein. He filed the Original Petition seeking a writ of certiorari calling for the records leading to Exts. P8 and P9 demand notice, and for a mandamus directing the Municipality to take up Ext. P4 appeal for consideration and dispose of the same after affording an opportunity to the appellant to be heard. According to the appellant, he is maintaining an auditorium for the service of the public on a non-profit basis for conducting marriages and receptions connected thereto. It is submitted that only a few marriages are conducted in the said auditorium in a year and that the same is not let out for any other purpose. Therefore the appellant submitted that the enhancement in the tax now made is not warranted. The revision petition preferred by the appellant was disposed of by Ext. P3 order determining the half yearly tax due at Rs. 7,403/- which was directed to be paid within 15 days from the date of receipt of Ext. P3. Ext. P4 is the representation sent by the appellant dated 18-2-1997 addressed to the Chair-man of the Manjeri Municipality, by which the appellant requested the Municipal authorities to cancel the enhancement of the tax. Ext. P5 is the notice dated 18-2-1997 issued by the Municipality informing the appellant that his appeal with reference to tax on Building No. 16/208 will taken up for consideration on 1-3-1997 at 10 a.m. at the office of the Municipality. The appellant was also directed to appear in

person with all connected records and evidence. On receipt of Ext. P5, the appellant sent a communication to the Municipality on 26-2-1997 expressing his inability to attend the hearing scheduled on 1-3-1997 as the appellant had to undergo an eye operation at Madurai, Tamil Nadu. In the circumstances, he prayed that the hearing may be adjourned to any other date convenient to the Chairman in the month of April. According to the appellant, he was expecting a notice of hearing from the Municipality. However, Municipality, without any further notice of hearing, passed an order rejecting the appeal filed by the appellant on the ground that the tax has not been deposited within the prescribed time and, therefore, the appeal cannot be entertained. The appellant was directed to remit the half yearly tax at Rs. 7,403/ within 15 days of receipt of Ext. P8 order. Ext. P9 is the demand notice. According to the appellant the Taxation and Finance Rules under Schedule II of the Kerala Municipalities Act has not been complied with in passing Ext. P8 order and therefore the order now passed by the respondent Municipality is non est in law. Rule 27 of said Rules state, that no appeal to the Council shall be heard unless the appeal is presented at the Municipal Office within fifteen days from the service of the notice referred to in Section 122 or within fifteen days from the date upon which the tax becomes payable u/s 104 or under Rule 18. The proviso to Clause (a) of the said Rule stated that the council may admit an appeal within fifteen days after the time prescribed in that rule, if cause is shown to its satisfaction for not performing it within the prescribed time. Clause (b) of the rule clearly stated that no appeal to the council shall be heard unless the tax based on the assessment prevailing in the year previous to the year in question has been deposited at the Municipal Office within the period specified in Sub-clause (i) or (ii) of Clause (a), as the case may be, or where an appeal is presented for admission under the proviso to the said clause on or before the day upon which the appeal is presented. It is not in dispute that the appeal has been presented within time. But, according to the Municipality, the appeal is not maintainable since the appellant has not complied with Rule 27(b), viz. the appellant has not deposited the tax within 15 days from the date upon which the tax becomes payable u/s 104 or under Rule 18. Mr. P.C. Sasidharan, learned counsel for the Municipality, submitted that since the appellant has not complied with the mandatory provisions of Rule 27, there is no need or necessity for the Municipality to entertain the appeal and issue further notice to the appellant. Per contra, counsel for the appellant submitted that the Municipality, without informing the further date of hearing, has disposed of the appeal filed by the appellant, without affording an opportunity to the appellant of being heard. According him, when the appeal has been presented within time, the Municipality ought to have afforded an opportunity to the appellant. It is submitted that the appellant was not in a position to appear for the hearing fixed on 1-3-1997, which has been communicated to the Municipality under Ext. P6 and the appellant had time enough to produce the receipt for payment of tax till the next date of hearing, which he was not informed of. In support of the above contention learned counsel for the appellant relied on the judgment of a learned single Judge of this

Court reported in M.L. Kurian and Another Vs. Kunnamkulam Municipality, Kunnankulam and Another,). In that case this Court has held that a notice shall be issued to the appellant before the appeal is rejected as not maintainable either on the ground of non-deposit of tax or on the ground of limitation. In the instant case the appeal has been rejected by the Municipality as not maintainable on the ground of non-deposit of tax. As already noticed, the appellant was directed to appear for hearing on 1-3-1997 and was required to produce evidence for deposit of tax only on the date of hearing of the appeal, viz. 1-3-1997. It is also not in dispute that the Municipality has not intimated that further date of hearing to the appellant and, therefore, the appellant could not produce any evidence for payment of tax before the Municipal authorities. The rejection of the appeal on the ground of non-deposit of tax due, without issuing a notice to the appellant, in our opinion, is not correct and, therefore, we feel that an opportunity should be given to the appellant to put forward his contentions at the time of hearing on his depositing the tax as assessed in the year previous to the year in question.

2. We, therefore, direct the appellant to deposit with the respondent Municipality within two weeks from today, the tax based on the assessment prevailing in the year previous to the year in question, and produce the receipt before the authorities concerned at the time of hearing. The respondent Municipality shall issue notice to the appellant intimating the date and time hearing of the appeal, and dispose of the appeal on merits in accordance with law, after affording an opportunity to the appellant. Interest, if any payable as per the rules can be demanded from the appellant. If the appellant failing to deposit the amount within time as specified above, the appeal filed by the appellant herein will stand dismissed. Till the disposal of the appeal as directed above, Ext. P9 shall stand stayed.

3. The judgment of the learned single Judge is modified as above and this Writ Appeal is disposed of accordingly.